HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No. 27894 of 1998

Dated ----- APRIL, 2007

BETWEEN

D.Narender Reddy and ors.

….Petitioners

The Commissioner, LB Nagar Municipality, RR District, and, ors.

-….Respondents.

HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No. 27894 of 1998

ORDER:

This Writ Petition is filed seeking Writ of Mandamus to declare the action of the first respondent in not taking steps for demolition of the house bearing No.4-167/4 situated at Sainagar Colony in Nagole village in the limits of L.B.Nagar Municipality as illegal and arbitrary and for consequential direction to the first respondent to demolish the said house.

The necessary facts in brief are as follows:

The father of the petitioners, by name, Late Sri D.Satyanarayana Reddy had purchased the plot bearing No. 81-A admeasuring 200 square yards situated in Sy.No. 102/4 of Nagole Village in Ranga Reddy District from its owner M/s. Antula Ramakrishna Reddy and others, through registered sale deed dated 17-7-1979. As per the

layout in respect of the land in said Survey number, there is 25 feet approach road to the petitioners land from the main road, and, the plot of the petitioners is at the dead end of the road facing the approach road, whereas, the fifth respondent was the owner of the Plot bearing No. 78 and one Sri Seshagiri Rao is the owner of Plot bearing No. 77, and, the said two plots are facing the main road and are on either side of the approach road leading to the petitioners plot. It is the case of the petitioners that the fifth respondent herein, who was the owner of Plot No. 78 had constructed his house bearing No.4-167/4 in his plot by encroaching the approach road and as also a portion of the area in Plot No. 77 towards Eastern side. It is stated in the affidavit filed in support of the Writ Petition that during the life time of the petitioners' father, he had filed representations on 29-2-1992, 3-9-1993, 15-5-1995 and finally on 16-4-1998 and in spite of the same, no action has been taken by the respondent-Municipality.

The first respondent-Municipality has filed counter affidavit. While generally denying the allegations of the petitioners, it is admitted therein that the owner of plot No. 77 had filed a case in L.G.O.P.No. 369 of 1993 before the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982, complaining about encroachment of the approach road and a portion of the land in Plot No. 77 and the said Court passed orders on 21-3-1995 in favour of the owner of Plot No. 77, directing the owner of Plot No. 78 to deliver the grabbed land and also pay compensation of Rs.5000/-. It is stated that subsequently the fourth respondent herein had filed Writ Petition No. 16767 of 1997 against the respondent-Municipality and others, seeking directions not to demolish the house bearing No.4-167/4 and this Court dismissed the said Writ Petition by order dated 1-8-1997. It is further stated in the

counter affidavit that no further steps are taken as much as the copy of the order of this Court is not available on their records. But, however, it is admitted in the counter affidavit that as per the lay out plan sanctioned by the erstwhile Gram Panchayat, there is an existing 25 feet road in between plot Nos. 77 and 78 and the fifth respondent herein obtained permission from the then Gram Panchayat and constructed house by encroaching 25 feet road as well as a portion of the land in Plot No. 77.

The sixth respondent, who is subsequently impleaded as party-respondent to this Writ Petition, stated in his affidavit that he had purchased the house bearing No. 2-3-325 (Old.No.4-167/4) situated in Plot No. 78 in Sy.No.102/4 in the plotted area of 400 square yards from the fifth respondent herein vide Registered Sale Deed Document No. 13115/2003, dated 30-10-2003. It is further stated that the fifth respondent had constructed the house after obtaining due permission from the Executive Officer of the then Gram Panchayat in the year 1986 and this subject Writ Petition is filed 12 years after the construction of the said house. The sixth respondent has denied the encroachment on the road portion and also on plot No. 77 and it is stated that his vendor had constructed the said house in Plot No. 78 of the lay out, which he had purchased through registered sale deed dated 31-10-1979. While denying the allegation of the encroachment, it is stated that unless a comprehensive survey with regard to location of the plots is conducted, no action can be taken against his property.

It is contended by Sri D. Prakash Reddy, learned Senior Counsel appearing for the petitioners that as much as the owner of Plot No. 77 filed a case in L.G.O.P.No. 369 of 1993 before the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 alleging

encroachment of a portion of land in Plot No.77 as well as the road and the said case was allowed in his favour by order dated 21-3-1995, it is established that the constructions were made by the fifth respondent by encroaching the road leading to the petitioners' plot. It is further submitted that, earlier, when steps were taken by the Municipality and notices were issued for removal of the encroachments, the fourth respondent as an agent of the fifth respondent filed Writ Petition No. 16767 of 1997 before this Court questioning the action of the respondent-Municipality in issuing notice for removal of encroachments, and the said Writ Petition was dismissed by order dated 1-8-1997. It is submitted that in spite of the said order of this Court, encroachments made by the fifth respondent are not removed by the first respondent-Municipality.

On the other hand, it is submitted by Sri P.Radhakrishna, learned Standing Counsel appearing for the first respondent-Municipality that as much as the earlier orders of this Court are not available in the records after constitution of the respondent-Municipality, no action was taken. It is further submitted that steps are being taken to secure the orders passed by this Court and Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 and the respondent-Municipality will take further steps in the matter in accordance with law.

It is submitted by Sri V.Tulasi Reddy, learned Counsel appearing for the sixth respondent that house bearing No.2-3-325 (Old.No.4-167/4) was constructed in Plot No. 78 without any encroachment and unless a comprehensive survey is conducted by issuing prior notice to the sixth respondent as he is a bona fide purchaser of the said plot for valuable consideration, no steps can be taken for demolition of the property. It is further submitted that in any event, the petitioners cannot

seek direction by way of Writ of Mandamus for demolition of the property. In support of his arguments, he placed reliance on a judgment of the Apex Court in the case of *Muni Suvrat Swami Jain Vs. Arun Nathuram Gaikward*[1]

From the material on record, it is evident in this case that large extent of land in Sy.No.102/4 of Nagole Village in Ranga Reddy District was divided into plots and was sold to various parties. It is the case of the petitioners that their late father had purchased plot bearing No. 81-A; whereas the fifth respondent had purchased plot No. 78 constructed the house and sold it to the sixth respondent. The lay out plan of the said Survey number is filed in the material papers, which shows that there is a 25 feet approach road in between plot Nos. 77 and 78, which is a dead end road and the plot of the petitioners is facing towards eastern side of the said road. Earlier, the owner of Plot No. 77, namely, Sri Seshagiri Rao had filed a case in L.G.O.P.No. 369 of 1993 before the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982, pleading encroachment of a portion of his plot and also the approach road by the fifth respondent and the same was allowed by order dated 21-3-1995. But, however, it appears, he did not contest the said matter and based on the counter affidavit filed by the respondent-Municipality, orders were passed for removal of the encroachment. It is also evident from the counter affidavit filed by the respondent-Municipality that earlier, notices were issued to the fifth respondent for removal of the encroachments by initiating proceedings under Section 192 of the A.P. Municipalities Act, 1965, as against which, the fourth respondent, who is an agent of the fifth respondent approached this Court by filing Writ Petition No. 16767 of 1997 and the

said Writ Petition also ended in dismissal by order dated 1-8-1997. Therefore, there appears no reason for the respondent-Municipality for not taking further steps in the matter. However, the fact remains that now the said property was transferred in favour of the sixth respondent by registered sale deed as early as on 30-10-2003. Though Section 192 of the A.P. Municipalities Act, 1965 empowers the Commissioner of the respondent-Municipality for removal of the encroachment, but however, before arriving at a conclusion, whether such portion is an encroachment or not, the same can be decided only after issuing notice to the person in occupation. Undisputedly, presently, the disputed construction is owned and possessed by the sixth respondent by virtue of his purchase from the fifth respondent vide registered sale deed dated 30-10-2003. The judgment of the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 may support the case of the petitioners in proof of allegation of encroachment of the disputed road by the fifth respondent, but however, in absence of any order for removal of the encroachment by the competent authority, i.e. Commissioner of the respondent-Municipality, as per the provisions of the A.P. Municipalities Act, 1965, no direction can be given in the nature of Writ of Mandamus for demolition of the house. But, at the same time, there appears no valid reason for not taking steps for a number of years on the representations made by the late father of the petitioners.

As the respondent-Municipality has failed to exercise the powers conferred on it under the provisions of the A.P. Municipalities Act, 1965 to enquire into the allegations of the petitioners, and, having regard to the facts and circumstances of the case, I deem it appropriate to dispose of the Writ Petition, directing the first respondent-

Commissioner to make an enquiry in this regard by issuing prior notice and opportunity to the petitioners as well as sixth respondent, by fixing date of hearing and consider the material placed by the respective parties including the judgment of the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982, dated 21-3-1995 in LGOP.No. 369 of 1993 and take appropriate decision in the matter as to whether the house constructed by the fifth respondent, which was purchased by the sixth respondent, encroached the road portion or not, and, pass appropriate orders, by recording findings on his own, within a period of two months from the date of receipt of a copy of this order. It is made clear that, if necessary, the first respondent shall also make personal inspection before appropriate orders are passed. If it is found ultimately after the enquiry that the house was constructed by the fifth respondent, which was sold to the sixth respondent, by encroaching the road portion, the respondent-Municipality shall take further steps for removal of such encroachments.

Subject to the above direction, the Writ Petition is disposed of. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: -----April, 2007.
Msnr.

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[1] 2006 AIR SCW 5192